

Richard E. Dunn, Director

Watershed Protection Branch

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Jeaneanne M. Gettle, Director
Water Protection Division
U.S. EPA, Region 4
61 Forsyth Street SW
Atlanta, GA 30303

RE: EPA Approval of Amendments to Chapter 391-3-6, Rules for Water Quality Control, specifically Rule 391-3-6-.03, "Water Use and Classification and Water Quality Standards", pertaining to Georgia's narrative water quality standards

Dear Ms. Gettle:

On March 27, 2018, the Board of the Georgia Department of Natural Resources ("DNR Board") adopted amendments to Georgia's water quality standards found in Rule 391-3-6-.03 of the Rules and Regulations for Water Quality Control, Chapter 391-3-6. Enclosed for your information are various supporting documents, including a certification of the Rules by Attorney General Chris Carr that states that in the opinion of the Attorney General, the rule amendments were adopted in accordance with State law. The Georgia Environmental Protection Division ("GA EPD") requests that U.S. EPA review the adopted language in accordance with 40 C.F.R. § 131.21.

The rule amendments clarify Georgia's narrative water quality standards under Rule 391-3-6-.03(5)(b)&(c). Explanation of the rule amendments is provided in the Synopsis and Statement of Rationale that are included under Attachment 1. The rule amendments are a clarification only and do not change the stringency of the narrative standards. The rule amendments also are not a substantive change in the agency's historical application of the narrative standards; a reasonableness standard has always been a part of Rule 391-3-6-.03(5)(b)&(c). The Superior Court of Wayne County, Georgia noted in a recent opinion that the reasonableness standard was a part of the rule before its amendment, finding that interpretation was "reasonable and in accord with the statutory and regulatory purposes and the context of the standard as a whole."¹ "[P]rotecting the use of water from 'unreasonable interference' . . . is reasonable and consistent with" Georgia's Water Quality Control Act and its stated purposes.² Moreover, the Court of Appeals of Georgia determined that "it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use."³ Accordingly, amending the narrative water quality standard to add the word "unreasonable" and to substitute the word "designated" for "legitimate" works as a mere clarification of any ambiguity in the

¹ Order on Petitions for Judicial Review at 6, March 17, 2017, *Rayonier Performance Fibers, LLC v. Altamaha River Keeper, Inc. and Richard Dunn*, Case No. 16CV390.

² *Id.* at 7.

³ *Altamaha River Keeper, Inc. v. Rayonier Performance Fibers, LLC*, 2018 Ga. App. LEXIS 365 *10 (June 13, 2018) (upholding Superior Court of Wayne County's conclusion that the narrative standard, before amendment, prohibits unreasonable interference with designated water use).


rule in keeping with EPD's longstanding interpretation and implementation,⁴ and does not change the rule's meaning or stringency.

The following information has been attached to assist you in your review:

- 1) A copy of the public notice package for the proposed rule amendments, which includes the public notice, the synopsis and statement of rationale for the proposed rule amendments, and the proposed rule amendments. The public notice was posted on EPD's website and was sent either via post or electronic mail to everyone on EPD's mailing list for people who have requested to be notified of proposed rule changes;
- 2) A copy of the e-mail notification distributed to the mailing list for purposes for verifying date of circulation;
- 3) A copy of the letter sent to the Office of Legislative Counsel providing notice of the proposed rule amendments;
- 4) A copy of EPD's response to comments document, as included in the Board package and subsequently posted on the EPD website;
- 5) A copy of the signed resolution from the Board of Natural Resources adopting the proposed rule amendments;
- 6) A copy of the transmittal e-mail from the DNR Commissioner's staff to the Secretary of State filing the Rule;
- 7) A copy of the letter from the Secretary of State's office acknowledging the Rule filing;
- 8) A copy of the Rule as adopted; and
- 9) A copy of the Attorney General's certification of the amendments.

GA EPD looks forward to EPA's approval of these amendments to Georgia's water quality standards. Please contact me at (404) 463-4911 if you have any questions or require additional information.

Sincerely,


James A. Capp, Branch Chief
Watershed Protection Branch

Attachments

⁴ See, e.g., *Altamaha River Keeper*, 2018 Ga. App. LEXIS 365 *12 (pointing out that there was nothing in the court record indicating that EPD "has taken an inconsistent position [on the rule] in the past"); see also *12 ("The Board's amendment to the narrative standard during the course of this appeal is also consistent with the interpretation of the narrative standard offered by EPD during the hearing.").